IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION NO.1822 OF 2006

Metal Box India Limited. ...Petitioner.
Vs.
Mr.Walter Santis & Ors. ...Respondents.
....
Mr. C.U. Singh, Senior Advocate with Mr. K.S. Bapat for the Petitioner.
Mr.N. M. Ganguli for Respondent Nos.1 to 9.
Mr.Naushad Engineer with Ms.Monali Sutrave i/b. Manilal Kher Ambalal & Co. for Respondent No.10 – ICICI Bank Ltd.
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CORAM : DR.D.Y.CHANDRACHUD, J.

September 12, 2006.

P.C.

Rule, by consent of Counsel returnable forthwith. Counsel appearing on behalf of the Respondents waive service. By consent of Counsel and at their request taken up for hearing and final disposal.

2. This petition is directed against a judgment and order dated 29th November 2005 of the Industrial Court in Complaint (ULP) No.169 of 2001. The Industrial Court allowed the complaint filed by the Respondents and found that an unfair labour practice

had been committed under Item 6 of Schedule II and Item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. One of the principal grounds on which the judgment of the Industrial Court is challenged is that the Court has enquired into facts that lie beyond the basis and foundation of the complaint. The focus of the complaint of unfair labour practices was the suspension of operations declared by the Petitioner on 15th December 1996. The contention of the Respondents, the original Complainants, was that the suspension of operations amounted to a lockout, that the lockout was without complying with the provisions contained in Section 24 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 and that accordingly, there was an unfair labour practice under Item 6 of Schedule II read with Item 9 of Schedule IV. The entire line of reasoning of the Industrial Court is contained in paragraph 33 of the judgment. On behalf of the Petitioner, it was submitted that the issue of closure under Section 25-O of the Industrial Disputes Act, 1947, was a matter on which there was absolutely no pleading in the Complaint of unfair labour practices. Similarly, it was urged that the subsequent developments flowing out of the scheme

sanctioned by the AAIFR under the Sick Industrial Companies (Special Provisions) Act, 1985, were not set up in the pleadings. Consequently, it was submitted that the Industrial Court had proceeded to allow the Complaint without any foundation in the pleadings on the record. Finally, it was urged that the Industrial Court has enquired into the justifiability of the lockout, something that is impermissible in a complaint of unfair labour practices under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. Reliance was placed on the judgment in **Modistone Ltd. vs. Modistone Employees' Union**.[1]

3. The petition has been heard finally at the stage of admission on the request of Counsel for the parties. After Counsel have been heard, the Court has been informed by Counsel appearing on behalf of the parties that the proceedings may be remitted back to the Industrial Court for a decision afresh, and the following order may be passed by consent without any further reasons being recorded:

-(1) The impugned Judgment and Order dated 29th

1 (2001) I CLR 1009

November 2005 of the Industrial Court at Mumbai in Complaint (ULP) No.169 of 2001 is quashed and set aside without the expression of any opinion by this Court on the merits of the respective rights and contentions of the parties. Complaint (ULP) No.169 of 2001 shall stand restored to the file of the Industrial Court for fresh disposal;

-(2) Respondent Nos.1 to 9 would be at liberty to amend the Complaint before the Industrial Court within a period of four weeks from today so as to place on the record the subsequent events that have taken place after the declaration of lockout including those upon the sanctioning of the scheme by the AAIFR under the Sick Industrial Companies (Special Provisions) Act, 1985. The Petitioner would be at liberty to file an additional Written Statement to deal with the contents of the Complaint as amended within a period of four weeks thereafter;

-(3) It would be open to the parties to lead fresh evidence before the Industrial Court in respect of their respective cases, having regard to the contents of the amended pleadings;

-(4) The Industrial Court shall endeavour an expeditious disposal of the complaint, preferably within a period of six months after the pleadings are complete;

-(5) All the rights and contentions of the parties are kept open including the contention of the Petitioner in regard to the maintainability of the complaint and the question of delay, if any.

4. The Petition is accordingly, disposed of since no other point has been pressed. There shall be no order as to costs.

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